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May 18, 2009

By e-filing

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 1149  
Washington, DC 20024

Re: Docket No. AB-1022 (Sub-No. 1X), *Arizona & California Railroad Company --  
Abandonment Exemption -- in San Bernardino and Riverside Counties, CA*

Dear Ms. Quinlan:

Hereby transmitted is a Reply In Opposition To Motion For Leave To File Rebuttal for  
filing with the Board in the above referenced matter.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland  
*Attorney for Committee for Preservation  
of the Rice-Blythe-Ripley Rail Line*

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225127

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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225127

ARIZONA & CALIFORNIA RAILROAD )  
COMPANY -- ABANDONMENT ) DOCKET NO. AB-1022  
EXEMPTION -- IN SAN BERNARDINO ) (SUB-NO. 1X)  
AND RIVERSIDE COUNTIES, CA )

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REPLY IN OPPOSITION TO  
MOTION FOR LEAVE TO FILE REBUTTAL

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COMMITTEE FOR PRESERVATION OF  
THE RICE-BLYTHE-RIPLEY RAIL LINE \*  
c/o THE CITY OF BLYTHE, CALIFORNIA  
235 North Broadway  
Blythe, CA 92225

Protestants

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Attorney for Protestants

DATE FILED: May 18, 2009

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\* Members of the Committee are identified in the initial pages of the Committee's Reply in Opposition to Petition for Exemption, filed on April 21, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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ARIZONA & CALIFORNIA RAILROAD	)	
COMPANY -- ABANDONMENT	)	DOCKET NO. AB-1022
EXEMPTION -- IN SAN BERNARDINO	)	(SUB-NO. 1X)
AND RIVERSIDE COUNTIES, CA	)	

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**REPLY IN OPPOSITION TO  
MOTION FOR LEAVE TO FILE REBUTTAL**

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Pursuant to 49 C.F.R. § 1104.13(a), THE COMMITTEE FOR PRESERVATION OF THE RICE-BLYTHE-RIPLEY RAIL LINE (the Committee) hereby replies in opposition to a Motion for Leave to File Rebuttal (Motion) filed by ARIZONA & CALIFORNIA RAILROAD COMPANY (ARZC) on May 11, 2009.

**THE MOTION**

In contrast to the 41-page Rebuttal that ARZC tendered with its Motion for Leave to File, the substance of ARZC's Motion itself consists of a single paragraph on pages 3-4 of the Motion, i.e.:

The ARZC Rebuttal addresses the arguments made by the Committee through reference to the facts in the Petition and corrects serious misstatements of law made by the Committee. In accord with precedent, the Rebuttal will provide the Surface Transportation Board (the 'Board') with 'clarif(ication of) certain matters . . . and more fully explain the factual situation, and (will be) filed in time for (the Board) to adequately consider them.' *Buffalo & Pittsburgh Railroad, Inc. -- Abandonment Exemption -- in Erie and Cattaraugus Counties, NY*, Docket No. AB-369 (Sub-No. 3X), (STB served September 18, 1998) at 2, where the Board permitted the railroad to file rebuttal.

### REPLY IN OPPOSITION

Contrary to the argument in the Motion, Board precedent is to reject Rebuttal that is attempted to be filed in a proceeding involving a Petition for Exemption of abandonment. Thus, in *Central R. Co. of Ind. -- Aband. Exempt. -- in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN*, 1998 STB LEXIS 121 (Docket No. AB-459 [Sub-No. 2X], decision served May 4, 1998, the Board, in rejecting Rebuttal, said (at \*5):

We also will reject a reply filed by CIND on April 30, 1998. Although styled a rebuttal, the pleading is a reply to protestants' reply to CIND's petition, and as such is prohibited by 49 CFR 1104.13(c). CIND filed its petition knowing that our procedures provide only for the filing of a petition and a reply thereto. Had CIND wished to assure itself the right to rebut a filing in opposition to its abandonment request, it could and should have filed a formal application. CIND's reply is prohibited by our rules . . .

In *Central Kansas Ry. -- Aband. Exempt. -- in Sedgwick County, KS*, 2001 STB LEXIS 356 (Docket No. AB-406 [Sub-No. 14X], decision served April 10, 2001), the Board, in rejecting Rebuttal, said (at \*2-3):

As noted, CKR replied to protestants' replies and to the motion to strike on February 20, 2001. A reply to the motion to strike is permissible. A reply to protestants' reply to CKR's petition is not. See 49 CFR 1104.13. Petitioner is aware of this fact and requests leave to file the reply. CKR asserts that acceptance of the reply will not delay the proceeding and will provide for a more complete record.

CKR's request will be denied, and, except for the matter on pages 14 and 15 replying to the motion to strike, the reply statement will be rejected. (footnote omitted). CKR filed its petition knowing that our procedures provide only for the filing of a petition and a reply thereto. The tendered pleading contains extensive argument and two new verified statements. CKR should have made as thorough and accurate a presentation as possible in its petition. While we have allowed the filing of additional evidence and argument in certain limited instances, CKR has not shown that allowing it to reply other than to the motion to strike is warranted here. Had CKR wished to assure itself the right to rebut a filing in opposition to its abandonment request, it could and should have filed a formal application.

In *Paducah & Louisville Ry., Inc. -- Aband. Exempt. -- in McCracken County, KY*, 2003 STB LEXIS 344 (Docket No. AB-468 [Sub-No. 5X], decision served June 20, 2003), the Board, in rejecting Rebuttal, said (at \*2):

Boral filed a motion to strike P&L's rebuttal as a prohibited reply to a reply under 49 CFR 1104.13(c). P&L replied in opposition to the motion, arguing, among other things, that its rebuttal was proper and should be accepted 'to provide the Board with a full and precise record.' If P&L desired to assure itself of the right to file the last word through a rebuttal, it should have filed a formal application. See *Central Railroad Company of Indiana--Abandonment Exemption--in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN*, STB Docket No. AB-459 (Sub-No. 2X) (STB served May 4, 1998); *Central Kansas Railway, L.L.C.--Abandonment Exemption--in Sedgwick County, KS*, STB Docket No. AB-406 (Sub-No. 14X) (STB served Apr. 10, 2001). Also, P&L's rebuttal includes detailed cost data and other materials that P&L should have included in its petition. While the Board has allowed the filing of additional argument and evidence in certain limited instances, P&L has not shown that such a filing is warranted here. Accordingly, P&L's rebuttal will be rejected.

Thus, Rebuttal in exemption proceedings will not be accepted into the record based on general allegations that it "will not delay the proceeding and will provide for a more complete record," as argued in the *Central Kansas* case, *supra*, nor that it will "provide the Board with a full and precise record," as argued in the *Paducah & Louisville* case, *supra*.

ARZC offers no more than similar generalities in support of its Rebuttal. ARZC states that its Rebuttal "addresses the arguments made by the Committee," and allegedly "corrects serious misstatements of law made by the Committee" (Motion at 3). Thus, despite its excessive length, ARZC's Rebuttal is no more than a run-of-mill reply to a reply. Such a reply is to be rejected.

The *Buffalo & Pittsburgh* case, cited by ARZC is thus shown not to represent Board precedent on acceptance or rejection of Rebuttal in abandonment exemption proceedings, but

instead, is shown to be out of step with the prevailing precedent identified above. That case does not support acceptance of ARZC's Rebuttal in any event. In accepting Rebuttal for filing in that case, the Board said that the Rebuttal was necessary to clarify certain matters, especially the interest of a protesting shipper, and to more fully explain the factual situation. (Docket No. AB-369 (Sub-No. 3X), decision served September 18, 1998, at 2). ARZC has not shown that the Rebuttal that it seeks to file is needed to clarify anything, nor is the factual setting in need of explanation. More importantly, in the *Buffalo & Pittsburgh* case, the Board stated that acceptance of that Rebuttal would not prejudice the protesting shippers in light of the Board's decision denying the Petition for Exemption, viz. (*id.*):

... More importantly, in light of our disposition of this matter (i.e., denial of the Petition for Exemption), the objecting parties -- whose interests in this regard our regulations seek to protect -- will not be harmed in any way by our consideration of these pleadings ...

That, too, distinguishes that case from the precedential cases cited above.

For each and all of the foregoing reasons, ARZC's Motion for Leave to File Rebuttal should be denied.

The Committee is not tendering Surrebuttal, as is sometimes done when unauthorized Rebuttal is filed. The record is plenty lengthy enough without a 41-page Rebuttal and Surrebuttal to boot. If the Motion for Leave to File Rebuttal were to be denied, there is an ample record in the Petition for Exemption and in the Reply in Opposition to that Petition for the Board to make an informed decision. If the Motion were to be granted, the Committee is confident that the Board would identify the baseless arguments in the Rebuttal without the aid of Surrebuttal, such

as ARZC's blatant distortion of the burden of proof in a contested Petition for Exemption of abandonment.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, the Motion for Leave to File Rebuttal should be denied.

Respectfully submitted,

COMMITTEE FOR PRESERVATION OF  
THE RICE-BLYTHE-RIPLEY RAIL LINE  
c/o THE CITY OF BLYTHE, CALIFORNIA  
235 North Broadway  
Blythe, CA 92225

Protestants

*Thomas F. McFarland*

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Attorney for Protestants

DATE FILED: May 18, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2009, I served the foregoing document, Reply In Opposition To Motion For Leave To File Rebuttal, on Louis E. Gitomer, Esq., 600 Baltimore Avenue, Suite 301, The Adams Building, Towson, MD 21204-4022, by e-mail to *Lou\_Gitomer@verizon.net*, and by first-class, U.S. mail, postage prepaid.



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Thomas F. McFarland